



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 203, 205, 207, 211, 212, 215, 217, 218, 219, 225, 228, 234, 236, 237, 250, and 252

RIN 0750-AI43

Defense Federal Acquisition Regulation Supplement:

Inflation Adjustment of Acquisition-Related Thresholds

(DFARS Case 2014-D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement the U.S.C. statute on inflation adjustment of acquisition-related dollar thresholds. This statute requires an adjustment every five years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. DoD is also proposing to use the same methodology to adjust some nonstatutory DFARS acquisition-related thresholds in 2015.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014-D025, using any of the following methods:

- o *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D025" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D025." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D025" on your attached document.

- o *E-mail:* osd.dfars@mail.mil. Include DFARS Case 2014-D025 in the subject line of the message.

- o *Fax:* 571-372-6094.

- o *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your

comment(s), please check *www.regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams,
Defense Acquisition Regulations System,
OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon,
Washington, DC 20301-3060. Telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to amend multiple DFARS parts to further implement 41 U.S.C. 1908. Section 1908 requires an adjustment every five years (on October 1 of each year evenly divisible by five) of statutory acquisition-related thresholds for inflation, using the Consumer Price Index (CPI) for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds (see FAR 1.109). As a matter of policy, DoD is also proposing to use the same methodology to adjust some nonstatutory DFARS acquisition-related thresholds. All proposed threshold adjustments would become effective on October 1, 2015.

FAR case 2014-022 proposes comparable changes to acquisition-related thresholds in the FAR.

This is the third review of DFARS acquisition-related thresholds since the statute was enacted on October 28, 2004 (section 807 of the National Defense Authorization Act for Fiscal Year (FY) 2004). The last review was conducted under DFARS case 2009-D003. The final rule was published under that case in the Federal Register on August 2, 2010 (75 FR 45072), effective October 1, 2010.

II. Analysis

A. What is an acquisition-related threshold?

This case builds on the review of DFARS thresholds in 2005 and 2010, using the same interpretation of an acquisition-related threshold. 41 U.S.C. 1908 is applicable to "a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an Executive agency, as the [FAR] Council determines."

There are other thresholds in the DFARS that, while not specified in law, nevertheless meet all the other criteria. These thresholds may have their origin in Executive order or regulation.

Therefore, as used in this case, "acquisition-related threshold" has a broader meaning, i.e., a threshold that is specified in law, Executive order, or regulation as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law, Executive order, or regulation to the procurement of property or services by an Executive agency, as determined by the FAR Council. Acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification.

Examples of thresholds that are not "acquisition-related," as defined in this case, are thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, liquidated damages, etc. This report does not address thresholds that are not acquisition-related.

B. What acquisition-related thresholds are not subject to escalation adjustment under this case?

41 U.S.C. 1908 does not permit escalation of acquisition-related thresholds established by the Construction Wage Rate Requirements statute (Davis Bacon Act), the Service Contract Labor Standards statute, or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979.

Also, the statute does not authorize DoD to escalate thresholds originating in Executive order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are first amended.

C. How does DoD analyze escalation of a statutory acquisition-related threshold?

If an acquisition-related threshold is based on statute, the matrix at

[http://www.acq.osd.mil/dpap/dars/pgi/docs/2014-D025_\(p\)_TAB_E_matrix_Sep_12_14.xls](http://www.acq.osd.mil/dpap/dars/pgi/docs/2014-D025_(p)_TAB_E_matrix_Sep_12_14.xls) identifies the statute, and the statutory threshold, including the original threshold and any subsequent revisions to it.

With the exception of thresholds set by the Construction Wage Rate Requirements statute (Davis Bacon Act), the Service Contract Labor Standards statute, and trade agreements, 41 U.S.C. 1908 requires adjustment of the acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all-urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are only subject to escalation from that date forward. Acquisition-related thresholds in statutes that took effect after October 1, 2000, are escalated from the date that they took effect. For

purposes of this proposed rule, the matrix includes calculation of escalation based on the estimated CPI value for March 2015 (currently estimated at 243.0) divided by the CPI for the date of enactment of the statute or regulation (October 2000, for statutes enacted prior to October 1, 2000). DoD will subsequently adjust as necessary before issuance of the final rule.

Once the escalation factor is applied to the acquisition-related threshold, then statutory thresholds must be rounded as follows:

< \$10,000	Nearest \$500
\$10,000 - <\$100,000	Nearest \$5,000
\$100,000 - <\$1,000,000	Nearest \$50,000
\$1,000,000 or more	Nearest \$500,000

The calculations in this proposed rule are all based on the base year amount, because escalated amounts in the 2005 rule were subject to rounding and using those amounts as the base would distort future calculations.

In 2010, some thresholds (e.g., \$3,000), although subject to inflation calculation, did not actually change, because the inflation in 2010 was insufficient to overcome the rounding requirements - i.e., the escalation factor, when applied, did not cause the escalated values to be high enough to round to the next higher value. However, in FY

2015, thresholds that did not escalate in 2010 will now escalate because of five additional years of inflation. Likewise, some thresholds that were escalated in 2010 (e.g., \$150,000) will not escalate in 2015.

This rule proposes to remove the major defense acquisition program thresholds (expressed in FY 1990 constant dollars) from the definition of "major weapon system" at DFARS 234.7001. The current major defense acquisition program thresholds in FY 2014 constant dollars are set forth in DoD Instruction 5000.02, established in accordance with the authority in 10 U.S.C. 2430(b), which allows the Secretary of Defense to adjust the amounts (and the base fiscal year) provided in subsection (a)(2) on the basis of DoD escalation rates (rather than the CPI for all urban consumers). The most recent thresholds were calculated by the DoD Comptroller, and coordinated with the Cost Assessment and Program Evaluation (CAPE) Office and the DoD General Counsel. In accordance with 10 U.S.C. 2430(b), these thresholds were reported to Congress in December 2013. There is no need to provide these thresholds in the DFARS. The term "major defense acquisition program" is already defined in DFARS 202.1 and used in multiple DFARS parts (e.g., 204, 209, 215, and 216).

This proposed rule has been coordinated with the Small Business Administration in areas of the regulation for which they are the lead agency.

D. How does DoD analyze a nonstatutory acquisition-related threshold?

No statutory authorization is required to escalate thresholds that were set as policy within the DFARS. Escalation of the DoD policy acquisition-related thresholds is generally recommended using the same formula applied to the statutory thresholds, unless a reason has been provided for not doing so. Escalation is calculated using the same procedures as were explained for the statutory thresholds, to provide consistency.

However, nonstatutory thresholds that exceed \$10 million may be rounded as follows:

\$10 million - < \$100 million Nearest \$5 million

\$100 million - < \$1 billion Nearest \$50 million

\$1 billion or more Nearest \$500 million

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act.

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule maintains the status quo by adjusting thresholds for actual inflationary increases in the CPI. However, an Initial Regulatory Flexibility Analysis has been performed and is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 41 U.S.C. 1908 and to amend other acquisition-related dollar thresholds that are based on policy rather than statute in order to adjust for the changing value of the dollar. 41 U.S.C. 1908 requires adjustment every five years of statutory acquisition-related dollar thresholds, except for

Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. While reviewing all statutory acquisition-related thresholds, this case presented an opportunity to also review all nonstatutory acquisition-related thresholds in the DFARS that are based on policy.

The objective of the case is to maintain the status quo, by adjusting acquisition-related thresholds for inflation. The legal basis is 41 U.S.C. 1908. The statute does not authorize the DFARS to escalate thresholds originating in Executive orders or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are first amended.

This rule will likely affect to some extent all small business concerns that submit offers or are awarded contracts by the Federal Government. However, most of the threshold changes proposed in this rule are not expected to have any significant economic impact on small business concerns because any threshold changes are intended to maintain the status quo by adjusting for changes in the value of the dollar. Often any impact will be beneficial, by preventing burdensome requirements from applying to more and more acquisitions, as the dollar loses value.

The rule does not impose any new reporting, recordkeeping, or compliance requirements. Changes in thresholds for approved information collection requirements are intended to maintain the status quo and prevent those requirements from increasing over time.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2014-D025), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act does apply. The proposed changes to the FAR do not impose new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* By adjusting the thresholds for inflation, the status quo

for the current information collection requirements are maintained under the following OMB clearance numbers:

OMB Control #	Title	DFARS Part
0704-0187	Information Collection in Support of the DOD Acquisition Process (Solicitation Phase)	208, 209, 226, 235
0704-0229	Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses	225
0704-0286	Defense FAR Supplement (DFARS) Part 205, Publicizing Contract Actions, and DFARS 252-205-7000, Provision of Information to Cooperative Agreement Holders	205
0704-0477	Organizational Conflicts of Interest in Major Defense Acquisition Programs	209.5

However, the rule contains one information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted to the Office of Management and Budget a request for approval of a new information collection requirement entitled "DFARS Part 249, Termination of Contracts, and Associated DFARS Clauses at 252.249."

A. Public reporting burden for this collection of information is estimated to average approximately .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 42.

Responses per respondent: Approximately 6.

Total annual responses: 260.

Preparation hours per response: Approximately .75 hours

Total response Burden Hours: 193.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail Jasmeet_K._Seehra@omb.eop.gov, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received from 30 to 60 days after the date of this notice,

but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060, or e-mail osd.dfars@mail.mil. Include DFARS Case 2014-D025 in the subject line of the message.

List of Subjects in 48 CFR Parts 202, 203, 205, 207, 211, 212, 215, 217, 218, 219, 225, 228, 234, 236, 237, 250, and 252

Government Procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 203, 205, 207, 211, 212, 215, 217, 218, 219, 225, 228, 234, 236, 237, 250, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 202, 203, 205, 212, 215, 217, 225, 234, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Amend section 202.101 by—

- a. Designating the definition of "Simplified acquisition threshold" in alphabetical order in the list of definitions; and
- b. In the definition of "Simplified acquisition threshold", removing "\$300,000" and adding "\$400,000" in its place.

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS
OF INTEREST**

203.1004 [Amended]

3. Amend section 203.1004 in paragraph (b)(2)(ii) by removing "\$5 million" and adding "\$5.5 million" in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.303 [Amended]

4. Amend section 205.303 by removing "\$6.5 million" and adding "\$7 million" in its place for the following—

- a. In paragraph (a)(i) introductory text, in two places;
- b. In paragraph (a)(i)(A); and
- c. In paragraph (a)(i)(B), in two places.

205.470 [Amended]

5. Amend section 205.470 by removing "\$1,000,000" and adding "\$1.5 million" in its place.

PART 207—ACQUISITION PLANNING

6. The authority citation for part 207 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

207.170-3 [Amended]

7. Amend section 207.170-3 in paragraph (a) introductory text by removing "\$6 million" and adding "\$6.5 million" in its place.

PART 211—DESCRIBING AGENCY NEEDS

8. The authority citation for part 211 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

211.503 [Amended]

9. Amend section 211.503 in paragraph (b) by removing "\$650,000" and adding "\$700,000" in its place in two places.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.7102-1 [Amended]

10. Amend section 212.7102-1 in paragraph (c) by removing "\$50 million" and adding "\$55 million" in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.403-1 [Amended]

11. Amend section 215.403-1 in paragraphs (c)(3)(B) and (c)(4)(B) by removing "\$15,000,000" and adding "\$20 million" in its place.

PART 217—SPECIAL CONTRACTING METHODS

12. Amend section 217.170 by—

- a. Revising paragraph (e)(1)(iv); and
- b. In paragraph (e)(5) by removing "\$100 million" and adding "\$139.5 million" in its place.

The revision reads as follows:

217.170 General.

* * * * *

(e) * * *

(1) * * *

(iv) Include a cancellation ceiling in excess of \$139.5 million (see 10 U.S.C. 2306c(d)(4) and 10 U.S.C. 2306b(g)).

* * * * *

217.171 [Amended]

13. Amend section 217.171 in paragraph (d) by removing "\$625.5 million" and adding "\$698.5 million" in its place.

217.172 [Amended]

14. Amend section 217.172 in paragraphs (c), (e)(1), and (e)(2) by removing "\$500 million" and adding "\$698.5 million" in its place.

PART 218—EMERGENCY ACQUISITIONS

15. The authority citation for part 218 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

218.270 [Amended]

16. Amend section 218.270 by removing "\$300,000" and adding "\$400,000" in its place.

PART 219—SMALL BUSINESS PROGRAMS

17. The authority citation for part 219 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

219.502-1 [Amended]

18. Amend section 219.502-1 in paragraph (2) by removing "\$350,000" and adding "\$400,000" in its place in both places.

219.502-2 [Amended]

19. Amend section 219.502-2 by—

- a. In paragraph (a)(i), removing "\$2.5 million" and adding "\$3 million" in its place; and
- b. In paragraph (a)(iii), removing "\$350,000" and adding "\$400,000" in its place.

PART 225—FOREIGN ACQUISITION

225.7204 [Amended]

20. Amend section 225.7204 by—

a. In paragraphs (a) and (b), removing "\$12.5 million" and adding "\$14 million" in its place in both places; and

b. In paragraph (c), removing "\$650,000" and adding "\$700,000" in its place.

225.7703-2 [Amended]

21. Amend section 225.7703-2 in paragraph (b)(2)(ii) by removing "\$85.5 million" and adding "\$95.5 million" in its place.

PART 228—BONDS AND INSURANCE

22. The authority citation for part 228 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

228.102-1 [Amended]

23. Amend section 228.102-1 by—

a. In the introductory text and paragraph (1), removing "\$30,000" and adding "\$35,000" in its place in both places; and

b. In paragraph (2) introductory text, removing "\$100,000" and adding "\$150,000" in its place.

PART 234—MAJOR SYSTEM ACQUISITION

24. Revise section 234.7001 to read as follows:

234.7001 Definition.

Major weapon system, as used in this subpart, means a weapon system acquired pursuant to a major defense acquisition program.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

25. The authority citation for part 236 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

236.601 [Amended]

26. Amend section 236.601 in paragraph (1) by removing "\$1,000,000" and adding "\$1.5 million" in its place.

PART 237—SERVICE CONTRACTING

237.170-2 [Amended]

27. Amend section 237.170-2 in paragraphs (a)(1) and (2) by removing "\$85.5 million" and adding "\$95.5 million" in its place in both places.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

28. The authority citation for part 250 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

250.102-1 [Amended]

29. Amend section 250.102-1 in paragraph (b) by removing "\$65,000" and adding "\$70,000" in its place.

250.102-1-70 [Amended]

30. Amend section 250.102-1-70 in paragraph (b)(1) by removing "\$65,000" and adding "\$70,000" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203-7004 [Amended]

31. Amend section 252.203-7004 by—

- a. Removing the clause date "DEC 2012" and adding "DATE" in its place; and
- b. In paragraph (c) introductory text, removing "\$5 million" and adding "\$5.5 million" in its place.

252.209-7004 [Amended]

32. Amend section 252.209-7004 by—

- a. Removing the clause date "MAR 2014" and adding "DATE" in its place; and
- b. In paragraph (a), removing "\$30,000" and adding "\$35,000" in its place.

252.209-7009 [Amended]

33. Amend section 252.209-7009 by—

- a. Removing the clause date "DEC 2012" and adding "DATE" in its place; and

b. In paragraph (a)(ii), removing "\$50 million" and adding "\$55 million" in its place.

252.225-7003 [Amended]

34. Amend section 252.225-7003 by—

a. Removing the clause date "OCT 2010" and adding "DATE" in its place;

b. In paragraph (b)(1), removing "\$12.5 million" and adding "\$14 million" in its place; and

c. In paragraph (b)(2)(i), removing "\$650,000" and adding "\$700,000" in its place.

252.225-7004 [Amended]

35. Amend section 252.225-7004 by—

a. Removing the clause date "OCT 2010" and adding "DATE" in its place; and

b. In paragraph (b)(1), removing "\$650,000" and adding "\$700,000" in its place.

252.225-7006 [Amended]

36. Amend section 252.225-7006 by—

a. Removing the clause date "OCT 2010" and adding "DATE" in its place; and

b. In paragraph (f)(1), removing "\$650,000" and adding "\$700,000" in its place.

252.225-7017 [Amended]

37. Amend section 252.225-7017 by—

- a. Removing the clause date "JAN 2014" and adding "DATE" in its place; and
- b. In paragraph (c) (1), removing "\$3,000" and adding "\$3,500" in its place.

252.225-7018 [Amended]

38. Amend section 252.225-7018 by—

- a. Removing the clause date "JAN 2014" and adding "DATE" in its place;
- b. In paragraph (b) (1), removing "\$3,000" and adding "\$3,500" in its place; and
- c. In paragraphs (d) (1) and (2), removing "\$3,000" and adding "\$3,500" in both places.

252.249-7002 [Amended]

39. Amend section 252.249-7002 by—

- a. Removing the clause date "OCT 2010" and adding "DATE" in its place; and
- b. In paragraph (d) (1), removing "\$650,000" and adding "\$700,000" in its place.

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